IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.3 OF 2005

Sopan Aanandrao More ...Appellant

Vs.

Satappa Nagappa Birajdar ...Respondent

Ms A.R.S.Baxi for the Appellant
Mr.Sanjay D. Thokade & Kranti Hiwrale for the Respondent.

CORAM: A.S.OKA, J.
DATED: FEBRUARY 3,2005.

P.C.:

1. Heard Counsel appearing for the parties. The Appeal is by the Original Defendant.

2. The learned Counsel for the Appellant submitted that the suit for possession filed by the Respondent is based on alleged Batai Agreement. She submitted that it is the case of the Respondent that original agreement was in possession of the Appellant and though the Respondent did not give any notice to produce to the Appellant, the Trial Court allowed him to produce the secondary evidence of the agreement in the form of Xerox copy thereof. The learned Counsel further submitted that the suit land was given to the Appellant on permanent basis and therefore, now the Respondent cannot seek possession.

3. In so far as the first submission is concerned, I find from the paragraph 5 of the Judgment of the Appellate Court that the same was not canvassed before the Appellate Court. It is, however, to be noted here that it was the specific case of the Appellant that no such Batai Agreement as pleaded by the Respondent was in existence. Therefore, the Appellant cannot contend that the Respondent has not given notice to produce to the Appellant.

4. So far as the second submission is concerned, in the written statement the Appellant pleaded that he was a tenant of the Respondent protected under the provisions of Bombay Tenancy and Agricultural Lands Act, 1948. The plea of tenancy was negatived by the Competent Court. Therefore, in the District Court issue of tenancy was not pressed by the Appellant. In view of this position the Appellant cannot now contend that the land was given to him on permanent basis.

5. After admitting the title of the Respondent and after failing to prove the plea of tenancy, the Appellant cannot seek to continue in possession. No substantial question of law arises. Appeal is dismissed with no order as to costs.

Judge.